APPENDIX A - Opinions Below

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 19,562

JAMES J. LAUGHLIN,
APPELLANT

v.

UNITED STATES OF AMERICA,
APPELLEE

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No. 19,563

ALLAN U. FORTE,
APPELLANT

v.

UNITED STATES OF AMERICA,
APPELLEE

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Appeals from the United States District Court
for the District of Columbia

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Decided July 28, 1967

*Mr. James J. Laughlin, pro se.*

*Mr. William J. Garber,* for appellant Forte.

*Mr. James A. Strazzella,* Assistant United States Attorney, with whom *Messrs. David G. Bress,* United States Attorney, and *Frank Q. Nebeker,* Assistant United States Attorney, were on the brief, for appellee.

Before MILLER, *Senior Circuit Judge,* LEVENTHAL, *Circuit Judge,* and COFFIN*, *Circuit Judge* of the United States Court of Appeals for the First Circuit.

COFFIN, *Circuit Judge:* The appellants, Laughlin and Forte, challenge on numerous grounds their conviction for conspiracy to obstruct justice and endeavoring to influence a witness. To understand clearly all the points raised, it is necessary to review the complex history of this and related cases from September 11, 1961, when Forte was indicted in the District of Columbia for abortion, alleged to have been committed on Mrs. Jean Smith, of Baltimore, Maryland. Laughlin was Forte's counsel at the trial, which began on February 12, 1963. Two other characters who will assume importance in this narrative are Detective Sergeant Samuel Wallace of the Washington police, who arrested Forte on the abortion charge, and Mrs. Bernice Gross, who investigated the charge while a member of the Baltimore police. The prosecution's principal witness at trial was Mrs. Smith. In defense, Forte testified that the charge was a fabrication, part of a "shakedown" scheme engineered by Sgt. Wallace. The trial ended on February 20 in a verdict of acquittal, but Forte's accusation triggered a grand jury investigation into "all the evidence of any obstruction of justice" in the case.

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* Sitting by designation pursuant to Section 291(a) Title 28 U.S. Code.

Before the grand jury, the evidence soon drifted away from the accusation directed at Sgt. Wallace. Mrs. Gross, testifying first, disclaimed any knowledge of a shakedown involving Wallace, and repeatedly denied speaking to Forte concerning his accusation or receiving payment from either Wallace or Forte or anyone acting for them in return for services performed in the Smith abortion case. Then Mrs. Smith testified that Mrs. Gross had sought to persuade her not to testify in the abortion case; that, at Mrs. Gross's instruction, she had written to the the United States Attorney asking to be excused as a witness; and that after writing the letter she had received several "presents" of money and baby clothes from Mrs. Gross.

Thereafter Mrs. Gross was taken to the office of Assistant United States Attorney Joseph M. Hannon, told of the facts that the government had learned from Mrs. Smith, and warned that she might be prosecuted for perjury unless she told "the truth about what happened." The Assistant United States Attorney in charge of the grand jury proceeding, Harold J. Sullivan, promised that he would ask the grand jury to be lenient in considering Mrs. Gross's part in dealing with Mrs. Smith, if it appeared that Mrs. Gross would be a witness against Laughlin and Forte. During approximately two hours of questioning, she admitted the truth of Mrs. Smith's story and stated in detail that she had acted at the direction of Forte and Laughlin. Then she returned to the grand jury proceedings and affirmed the statement she had given during the interrogation. At the close of her testimony, Mr. Sullivan asked if she would make telephone calls to Forte and Laughlin and allow the government to record the conversations. She demurred at first, then acquiesced when the deputy foreman suggested that, although the jury would prefer to "get the ones responsible for the overall operation", "if they make it impossible for us to get the big ones we'll get the little ones." The calls were made

and recorded. Later, after Laughlin testified before the grand jury that he had never met or spoken to Mrs. Gross, the government played for that jury a recording of at least one conversation between Mrs. Gross and Laughlin in which Laughlin's comments appeared to assume prior acquaintance with Mrs. Gross and familiarity with the dealings with Mrs. Smith.

In July 1963 the grand jury issued two indictments that are relevant here. One charged Laughlin with perjury in his testimony before the grand jury. The other, which gave rise to the present case, was in four counts. The first charged Laughlin and Forte together with conspiring to obstruct justice and commit offenses against the United States by, *inter alia*, influencing a material witness (Mrs. Smith) in the abortion trial. 18 U.S.C. § 371. Count two charged Forte individually and count four charged Laughlin individually with attempting to influence Mrs. Smith. 18 U.S.C. § 1503. And count three, which was later dismissed, charged Forte with endeavoring to influence another witness (Mrs. Dorothy Birge).

The perjury trial began first, on October 1, 1963. The government offered as evidence recordings of the Gross-Laughlin telephone conversations. The trial court at first found that Mrs. Gross had consented to the recordings and admitted them into evidence; then, after reviewing the transcript of the colloquy at the close of Mrs. Gross's grand jury testimony, ruled the recordings inadmissible on the ground that Mrs. Gross's consent was coerced. A mistrial was declared. *United States* v. *Laughlin*, 222 F.Supp. 264 (D.D.C. 1963). Laughlin filed a motion to dismiss the indictment, which was granted on the ground that without the excluded recordings the prosecution rested solely on the uncorroborated testimony of Mrs. Gross. *United States* v. *Laughlin*, 223 F. Supp. 623 (D.D.C. 1963).[1] The government moved to reconsider and

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[1] At the same time the District Court denied a motion to

vacate the order of dismissal, arguing that Mrs. Gross's testimony was corroborated by telephone company records of calls between her number and Laughlin's. The motion was denied, *United States* v. *Laughlin,* 226 F. Supp. 112 (D.D.C. 1964), for reasons that will be discussed below. The government noted an appeal, then voluntarily dismissed it, and the perjury case terminated.

Trial began on the conspiracy indictment on April 16, 1964, resulting in judgments of conviction. Among the government's evidence were the telephone recordings that had been ruled inadmissible at the perjury trial. We reversed the conviction of both defendants and remanded for a new trial, holding that the judgment in the perjury case precluded relitigation of the admissibility of the recordings. *Laughlin* v. *United States,* 120 U.S. App. D.C. 93, 344 F.2d 187 (1965).

The new trial began on June 2, 1965. The government's case consisted basically of the testimony of Mrs. Smith and Mrs. Gross, which was generally consistent with their testimony before the grand jury. Mrs. Gross also testified to a considerable number of telephone conversations with either Forte or Laughlin in which the details and the progress of the conspiracy were discussed. On this point her testimony was corroborated by telephone company records, many of them the same records involved in the motion to reconsider dismissal of the perjury indictment, *supra.*

In defense, Forte testified that Mrs. Gross had instigated their meetings, offering to help him in the Smith case; that, upon his response that he wasn't worried about the Smith case because he was innocent but was disturbed by Sgt. Wallace's shakedown attempts, she offered to "take care of that"; and that he paid her for attempting to take care of Wallace. He denied any part in attempt-

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dismiss the pending conspiracy indictment. 223 F.Supp. at 626.

ing to influence Mrs. Smith. Laughlin offered no testimony. The jury returned a verdict of guilty on all three counts.

Both defendants now appeal, raising points that appear to make all the above facts and proceedings relevant to some degree. Upon consideration of all the points raised, we find no error in this latest trial. Of some seventeen separately entitled points in appellants' argument, we have selected only those which, in our view, merit considered discussion here.

Appellants argue that the indictment should have been dismissed because of a variety of defects in the grand jury proceedings. Most substantial of these is the claim that the recordings of the Gross-Laughlin telephone conversations, now established to have been illegally obtained, were played for the grand jury and thus contributed to and tainted the indictment. As to this, the Supreme Court has repeatedly held that "[a]n indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face, is enough to call for a trial on the merits." *Costello* v. *United States,* 350 U.S. 359, 363 (1956). It might, we suppose, be argued that *Costello* involved only the use of hearsay evidence before the grand jury, while this case involves the use of evidence obtained in violation of law, and that the deterrent policy of the exclusionary rule (*e.g., Mapp* v. *Ohio,* 367 U.S. 643 (1961)) requires us to deny the government any benefit from an invasion of personal rights. *But see Holt* v. *United States,* 218 U.S. 245 (1910) (coerced confession).[2] But the defendant had ample opportunity at trial to prevent any ultimate prejudice stemming from the government's illegal actions. We do not mean to say that an indictment would always be unassailable, even when

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[2] *See also Developments in the Law—Confessions,* 79 Harv. L. Rev. 935, 1055-57 (1966).

based on no competent evidence. *Cf. United States* v. *Laughlin, supra,* 226 F. Supp. at 114. Here there was ample competent evidence before the grand jury to justify bringing the defendants to trial on the conspiracy charge. *Cf. Coppedge* v. *United States,* 114 U.S. App. D.C. 79, 311 F.2d 128 (1962), *cert. denied,* 373 U.S. 946 (1963). Nor can we say as a matter of law that the recordings might have had such force in establishing the conspiracy charge (as opposed to the perjury charge against Laughlin) that their admission tainted the entire proceedings.

It is argued further that the grand jury exhibited bias against both Forte and Laughlin. Most of the instances cited reflect only a natural reaction to the evidence that Forte and Laughlin had engaged in a criminal conspiracy and show, not that the jury was biased, but that it believed the evidence. One noteworthy incident occurred during Sgt. Wallace's testimony. Mr. Sullivan asked:

> "And as a result of certain information which came to the attention of the United States Attorney from Mr. James J. Laughlin, did there come a time in the past several days that you checked out a story provided us by Mr. Laughlin that Jean Smith of the Baltimore area had a record or a reputation as a call-girl and prostitute?"

Wallace answered that his investigation showed only that a Jean Smith had once been arrested in Baltimore County for being drunk and disorderly. This prompted a juror to remark that "Mr. Laughlin seems to be throwing around an awful lot of accusations." And, very shortly, a juror (perhaps the same one) said:

> "We had this charge interjected into this case against this Hill woman, the same charge . . . . And I think in the future, on these witnesses we have had an awful lot of countercharges here, and a lot of people make countercharges when they are trying to cover up something against themselves. . . . I think this Grand Jury wants to hold this testimony on a little

higher standards than Jim Laughlin's concept of trying a law case. That's all I have to say."

Although the record before us does not reveal the precise source of the other accusations that went to make up the "awful lot", we note that this one appears to have been injected gratuitously by Mr. Sullivan in a way that could have prejudiced Laughlin unfairly. That Laughlin made such an accusation, if in fact he did, would be relevant only on the tenuous theory that he thereby acted as a guilty man would. Such evidence would surely be inadmissible at trial, even if presented, as here it was not, by direct testimony rather than unsworn hearsay. Moreover, we are at least surprised that Wallace, who was himself an object of the grand jury's investigation, should be used as an investigator. The effect may well have been equivalent to an endorsement of his trustworthiness by the United States Attorney's office.

Nevertheless, although we may condemn this incident as bad practice in the abstract, we are not persuaded that the defendants were substantially prejudiced by it. The other competent evidence before the grand jury was ample to support the indictment; and in no way does this incident or any other incident in the record demonstrate the sort of general bias against the accused that would vitiate the proceeding and require dismissal of the indictment.

Coming to the trial itself, appellants' principal contention is that Mrs. Gross's testimony should have been excluded entirely, on two grounds: (a) that the statements of a coconspirator are inadmissible against anyone but himself unless there is substantial independent evidence tending to establish the existence of the conspiracy; and (b) that the testimony here was coerced and inherently incredible as a matter of law.

The first argument is based on a misunderstanding of the rule of law cited. That rule applies only to out-of-court (*i.e.*, hearsay) statements of a coconspirator. *E.g.*,

*Glasser* v. *United States,* 315 U.S. 60 (1942). It does not exclude proof of a conspiracy by the direct testimony under oath of a party to it.

The second argument rests on what is asserted to be the coercive nature of the United States Attorney's interrogation of Mrs. Gross during the grand jury proceedings, on the established coercion in obtaining her permission to record telephone calls, and on allegations of her dealings with the United States Attorney that are wholly unsupported by the record. But we are not dealing here with the admissibility of an allegedly coerced confession against Mrs. Gross herself. Nor are we dealing with the use of such a statement against someone else. *Cf. Turner* v. *Pennsylvania,* 338 U.S. 62, 65-66 (1949) (dictum). Here Mrs. Gross testified directly in open court. That the substance of her testimony coincided with prior statements obtained under possible coercive circumstances is of no consequence, except perhaps as the jury might have considered it to bear on her credibility. As to that, the appellants were afforded and they exercised full opportunity on cross-examination to bring out, not only the circumstances of Mrs. Gross's prior statements to the United States Attorneys, but also her prior perjury before the grand jury and her hope of escaping indictment for her own part in the conspiracy.

Appellant Laughlin contends that the telephone company record cards, purporting to show calls between Mrs. Gross's telephone in Baltimore and various of Laughlin's telephones in Washington, should have been excluded from evidence because the same records were conclusively ruled inadmissible on the government's motion to vacate dismissal of the earlier perjury indictment. *United States* v. *Laughlin,* 226 F. Supp. 112 (D.D.C. 1964), *supra.* But we do not read the decision in that proceeding as declaring the records inadmissible. The question before the district court was whether, when the illegally obtained tape

recordings were excluded, the competent evidence before the grand jury was sufficient to support an indictment for perjury in view of the rule that perjury must be proved by at least the testimony of one witness plus convincing corroboration. 226 F. Supp. at 114. Thus, the court held only that the telephone record cards did not constitute convincing corroboration. But that is not to say that they do not constitute permissible corroboration in a non-perjury case. In fact, the reason for the district court's decision is that:

> "These records prove only one thing, if they prove anything at all, and that is, telephone calls were made between certain telephone numbers. To argue from a phone company record showing a call between certain phone numbers that the persons in whose names those phones are listed made the call is destructive of a very important rule of evidence; namely, that the person making the entry . . . should be making the entry based on personal knowledge. . . ." 226 F. Supp. at 113.

Here, before the cards were offered in evidence, Mrs. Gross testified that she had made or received calls to or from Laughlin at the days and times shown on the cards. It was permissible to show in corroboration that calls were in fact made between the relevant telephone numbers on those days at those times, and the cards were offered for no other purpose. There is no requirement in this case that the corroboration be convincing.

On cross-examination of appellant Forte, the government was allowed to ask: ". . . are you the same Allen U. Forte who, in March of 1942, under the name of A. U. Forte, in North Carolina, was convicted of abortion?" And Forte replied: "Yes, I was, but I was later pardoned by the Governor." Forte now argues that the trial court abused its discretion under the doctrine of *Luck* v. *United States,* 121 U.S. App. D.C. 151, 348 F.2d 763 (1965), in allowing the impeachment. On the contrary, the record shows that the trial court observed carefully the spirit of

*Luck* in deciding to allow the question, while excluding mention of several later convictions in Maryland. The issue was heard out of the presence of the jury for nearly a day and a half of the trial. The certificate of pardon in no way indicated that it was grounded on Forte's innocence. On redirect examination Forte testified in explanation that he had pleaded *nolo contendere* to the charge because of a misunderstanding. Furthermore, despite the trial court's specific permission to protest his innocence, *see United States* v. *Boyer*, 80 U.S. App. D.C. 202, 150 F.2d 595 (1945), Forte did not do so.

Nor was there error in refusing a requested instruction that Forte's explanation and the pardon could be considered in evaluating his criminal record. The request was tendered after the entire charge had been given, long after Forte's counsel had specifically conceded that the court's instruction on the effect of the conviction was correct if the evidence of the conviction was properly admitted. Under the circumstances the court was well justified in refusing to argue the defendant's case.

Similarly, there was no error in refusing the immediately following request "that the jury be instructed, as Forte testified, his relation with Gross was instigated by Gross, and the purpose of their meeting and telephone conversations was for Gross to supply Forte with information concering one Samuel Wallace."[3] The trial court is not required to rehearse the evidence, especially where the effect would be, as it would here, to give special emphasis to the defendant's testimony. This is not a case like *Levine*

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[3] We take it that the trial court interpreted this as a request that the jury be instructed to acquit Forte if they believed his testimony and not, as the language quoted seems to say, a request that Forte's testimony be declared true. After the request was denied, Forte's counsel submitted a written version for the record which cleared up the ambiguity, but otherwise added nothing significant.

v. *United States,* 104 U.S. App. D.C. 281, 261 F.2d 747 (1958),[4] where there was a risk that the jury might find the defendant guilty although believing his testimony, because of failure to appreciate the significance of defendant's evidentiary theory.

In defining the government's burden to prove guilt beyond a reasonable doubt, the trial court said:

> ". . . A reasonable doubt is one which is reasonable in view of all the evidence. Therefore, if after an impartial comparison and consideration of all the evidence you can candidly say that you have such a doubt as would cause you to hesitate to act in matters of importance to yourselves, then you have a reasonable doubt. But if after such impartial comparison and consideration of all the evidence, and giving due consideration to the presumption of innocence which attaches to the defendant, you can truthfully say that you have an abiding conviction of the defendant's guilt such as you would not hesitate to act upon in the more weighty and important matters relating to your personal affairs, then you have no reasonable doubt."[5]

Appellants assert that it was error not to add that reason-

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[4] In *Levine,* the defendant, a lawyer, was charged with falsely impersonating a police officer in attempting to obtain a statement from the prosecuting witness in a criminal case in which he represented the defendant. He testified that he had said that he was an attorney for the defense and that he was an "officer of the Court and that it was my duty to find out what happened so that I could protect my client." 104 U.S. App. D.C. at 282, 261 F.2d at 748. In a sense these "special facts" constituted a sort of confession and avoidance which, though sounding like "impersonating a police officer", would, if believed, absolve the defendant. This is quite different from a "theory" that the conversations were innocent rather than conspiratorial.

[5] We note that this charge is virtually identical in substance with the "exemplary" charge in *Moore* v. *United States,* 120 U.S. App. D.C. 203, 345 F.2d 97 (1965).

able doubt might arise from lack of evidence. To be sure, we have on occasion defined reasonable doubt as "a doubt arising from the evidence or from a lack of evidence, after consideration of all the evidence." *E.g., Bishop* v. *United States,* 71 U.S. App. D.C. 132, 107 F.2d 297 (1939). But we did not thereby make our language the only correct formula. In fact, in a case where some lack of evidence for the government fairly creates a reasonable doubt of guilt, we may expect a normally intelligent jury to perceive that fact after comparison and consideration of all the evidence. *See People* v. *Radcliffe,* 232 N.Y. 249, 133 N.E. 577 (1921). But we need not declare that in all cases it would be correct to refuse a tendered instruction like the appellants' here. For here the appellants have made no attempt to show prejudice, and after reading the entire trial transcript we can see none.

Finally, appellants argue that they were gravely prejudiced by the trial court's reading to the jury paragraph six of count one of the indictment. That paragraph alleged that one of the objects of the defendants' conspiracy was to influence Mrs. Dorothy Birge, a material witness in the abortion trial. Count three, charging Forte with endeavoring to influence Mrs. Birge, had been dismissed before trial for failure to allege venue in the District of Columbia; but that did not make it improper to allege the same endeavor as part of the conspiracy. The jury was properly instructed that the indictment was not evidence. Moreover, when the court offered to clarify the significance of paragraph six, both appellants declined on the ground that it might "compound the effect that the reading of this might have". Even if paragraph six had not been a proper part of the indictment, we think an explanation and instruction to disregard would have been effective. This is not a case where inherently persuasive evidence was improperly admitted.

We have considered carefully all the other points raised

by appellants in their brief and memoranda allowed to be filed after argument and find them wholly without merit. We are satisfied from our reading of the entire record that the trial was conducted in an exemplary manner, with notable concern to protect the appellants' rights.

*Affirmed.*

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20,327

JAMES J. LAUGHLIN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

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Appeal from the United States District Court
for the District of Columbia

JUL 28 1967

Decided July 24, 1967

*Mr. James J. Laughlin,* appellant *pro se.*

*Mr. James A. Strazzella,* Assistant United States Attorney, with whom *Messrs. David G. Bress,* United States Attorney, and *Frank Q. Nebeker* and *Harold J. Sullivan,* Assistant United States Attorneys, were on the brief, for appellee.

Before WRIGHT, MCGOWAN and LEVENTHAL, *Circuit Judges.*

PER CURIAM: Appellant was convicted of perjury, 18 U.S.C. § 1621, and sentenced to 20 months to five years, to run concurrently with two other concurrent 20 month to five years sentences imposed in a companion case, *Laughlin*

v. *United States*, No. 19,562, affirmed today. We have carefully studied the various points raised on this appeal. We find them all without merit.

*Affirmed.*

## APPENDIX B - Judgments Below

UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit
September Term, 1966

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| James J. Laughlin, Appellant, | ) | |
| v. | ) | No. 19,562 |
| United States of America, Appellee. | ) | |
| Allan U. Forte, Appellant, | ) | |
| v. | ) | No. 19,563 |
| United States of America, Appellee. | ) | |

*Appeals from the United States District Court for the District of Columbia*

Before: Miller, *Senior Circuit Judge*, Leventhal, *Circuit Judge*, and Coffin,* *Circuit Judge* of the United States Court of Appeals for the First Circuit.

JUDGMENT

These causes came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and were argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the judgments of the District Court appealed from in these causes be, and they are hereby, affirmed.

Per Curiam

Dated: July 28, 1967

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* Sitting by designation pursuant to Section 291(a) Title 28 U.S. Code.

UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit

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|---|---|---|
| James J. Laughlin,<br>Appellant,<br>v.<br>United States of America,<br>Appellee. | ) | No. 20,327 |

*Appeal from the United States District Court for the District of Columbia*

Before: Wright, McGowan and Leventhal, *Circuit Judges.*

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Curiam

Dated: July 28, 1967

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# APPENDIX C

## PROCEEDINGS BEFORE GRAND JURY AND INTERROGATION BY PROSECUTION TENDING TO SHOW COERCION OF MRS. GROSS

*United States v. In Re: Pos. Viol. of 22 D.D.C.U.S.C. 501, et al.*, January 1963 Grand Jury, March 1, 1963, Friday.

Mrs. Gross first appeared before the Grand Jury on March 1, 1963. In this appearance, Mrs. Gross denied any knowledge of or any connection with petitioners or any attempt to influence witnesses in the Forte abortion trial. The transcript of that session, and later sessions, of the Grand Jury is included in the certified record here.

Thereafter, Mrs. Gross was taken to the office of the prosecutor where she was interrogated by two prosecuting attorneys. She was confronted with the conflicting testimony of Mrs. Smith, the person upon whom Forte allegedly had performed the abortion. The following excerpts tend to indicate a course of coercion and duress pursuant to which Mrs. Gross changed her story and implicated petitioners.

**1. Excerpts from "Interrogation of Mrs. Bernice Gross, Room No. 3439, U.S. Attorney's Office U.S. Court House, Washington, D.C., Friday, 1 March 1963, from 12:17 to 2:30 p.m."**

[Prosecutor A]: Mrs. Gross, I have asked the reporter to stay. I want to say the same things I said in the Grand Jury to you again. We want your cooperation from you very much, but first of all, just like I did in the Grand Jury, you have a perfect right under the Fifth Amendment to say I don't want to say anything. It is a perfect right you have. No one can hold it against you, even if it is a question that leads up logically to another one that is going to get you in trouble. [p.1]

Mrs. Gross: I don't want that. I had that once. I told you.

* * *

[Prosecutor A]: Let me tell you what we are going to talk about.. Just remember that before you start saying a
[p.2] single word if you want to call an attorney you can use the phone here, use the pay phone, you can leave and talk to an attorney, and come back. You are under no compulsion to stay, but we want to ask your help on something. So you do understand all that?

Mrs. Gross: I understand, but what do I need an attorney for?

* * *

[Prosecutor A]: Your answers then in the Grand Jury are just absolutely clear, there is no doubt about what you said. You said in there you understood what we were investigating and you knew it was an investigation to get truthful answers. That is all we want to do.

[p.3] Mrs. Gross: Well, that is not true. I'll tell you the same thing I did the Grand Jury. I don't know anything, and that is it. Not a thing.

[Prosecutor A]: Well, here's the thing, Mrs. Gross. We want your cooperation. I'm not saying you're not being truthful about that now but I'm saying we are sure of certain things. We are sure of that call of Forte's lawyer after the trial when he said he was dissatisfied.

Mrs. Gross: No, that isn't true; that isn't true.

[Prosecutor A]: Someone said he was Forte's lawyer, someone you thought was?

Mrs. Gross: No; no.

[Prosecutor A]: You don't have to say anything about it at all, not a single word, but here's the proposition I want to make to you. We want your truthful testimony, we want it very badly because we want to know who is putting up the money in this case to get witnesses to skip out on the trial or to come to the trial and lie. We want to know that very, very badly, and we know certain approaches–

* * *

[Prosecutor A]: I'll say this to you. When I talked on the phone last night, and Mrs. Gross and I talked earlier in the case, it has been such a pleasant relation that I feel bad because I have evidence that you are not telling the truth. I feel bad for you because there are things, and the answers you just gave in the Grand Jury there were clear answers, they were understandable answers, no equivocation. You said you realized the questions were material. You said you understood you had a right under the Fifth Amendment– [p.4]

Mrs. Gross: Yes, but–

[Prosecutor A]: You said you wanted to testify. You did testify and the Grand Jury is in position to be able to deliberate as to whether you committed perjury. I want you to know perjury over here carries a two-year minimum jail sentence and a maximum of ten. There is no sense of you getting caught in a bind if you can put the finger on who put this money up. Now we have evidence and it is a simple thing. It is tough for someone to spin somebody who has been given money. It's tough. But don't get caught in a bind yourself.

* * *

Mrs. Gross: What is it that you want out of me, and what will happen to me? [p.5]

[Prosecutor B]: The truth.

Mrs. Gross: I know, but I told the truth once before, too. I mean if you can't understand my position.

[Prosecutor A]: I think I do.

* * *

[Prosecutor B]: What [Prosecutor A] is suggesting is that you're in the switches again. [p.6]

Mrs. Gross: I know, and I'm wondering what's going to happen to me.

[Prosecutor A]: Here's what can happen. If you just simply tell the truth to the Grand Jury about who gave you the money, how much they gave and what they wanted

you to get Jean Smith to do, I will tell the Grand Jury that our position is that a wrong has been committed, somebody tried to get a witness taken care of, a lot of money was spent on it, and without your testimony the whole thing falls apart.

Mrs. Gross: Then what will happen?

[Prosecutor A]: Here's what will happen. I will say to that Grand Jury the U.S. Attorney's Office considers this to be about the dirtiest thing that has happened in a long time in a trial over here, there's been money passed out in the Jean Smith trial, Birge—

Mrs. Gross: I don't know about it. I never met her. I don't know anything.

[p.7] [Prosecutor A]: If you tell the truth about what happened in the Smith thing—I'm the DA that will be handling the Grand Jury; [Prosecutor B] came in on it—and I will say to the Grand Jury alone, or I'll say it with you present, I'll ask the Grand Jury to consider this fact: It is an important case where these people tried to get witnesses paid off, there's a lot of money being spent; justice can't work out if people are paying money like that; everything fails if the oath fails; but, Grand Jury, there is one thing you have got to do, give us this witness for trial; we need Mrs. Gross; without her we have got nothing, with her we have got something; indict the big fish and let Mrs. Gross be a government witness; without her we have got nothing.

Mrs. Gross: In other words, if Jean Smith had gotten any money would she have testified? If she had gotten anything would she have testified the way she did? Truthfully?

[Prosecutor A]: She did. Mrs. Smith got several sums of money; later came over here to Washington trying to get out of the case. The specific suggestion was made to her, say your baby is sick tomorrow and you don't have to go. What will I do next time, Mrs. Gross? Next time say you are sick. This thing will be taken care of, it will never go

to trial. You say when you get on the stand, Mrs. Smith, you don't recognize Forte. I'm not going to lie, but these letters are written, the gifts of money are made. [p.8]

* * *

[Prosecutor A]: We don't want you mixed up, all we want is the simple unvarnished truth.

Mrs. Gross: Am I on trial or what?

[Prosecutor A]: That is your choice.

[Prosecutor B]: [Prosecutor A] has indicated it is your choice. If you want to talk to a lawyer you are free to talk to the lawyer. I think that in your experience—you're an [p.9] experienced policewoman, aren't you? I would say you're in the switches.

* * *

[Prosecutor A]: I want to level with you. If you tell the truth about what happened you're not going to get in trouble because I'm going to tell the Grand Jury without you there is no chance of our making the case on the big fish; there is no possibility—there is a very small possibility, but without you we can't do it.

* * *

[Prosecutor A]: Until I know you're on the right team—[p.10]

Mrs. Gross: I don't want to be on the wrong team, believe me I don't. I was never involved criminally in anything, never, and I don't intend to start now, believe me.

[Prosecutor A]: As [Prosecutor B] said, you're in the switches. You have got a decision right now which way you are going to go. If you want to be on the right team, the one telling the truth, that is what we want from you, whatever is the truth.

Mrs. Gross: What will happen if I just don't know anything about it? Nothing?

[Prosecutor A]: Well, the possibilities of what can happen are these: You told a story in the Grand Jury this morning.

Mrs. Gross: That's right.

[Prosecutor A]: If it is a lie, and we have one witness, that is not a perjury. We have one witness who says it was different and we have other evidence. I'll tell you what we will do. I'll be frank with you.

Mrs. Gross: I want you to.

[Prosecutor A]: We have something. I'm not going to tell you if you decide to go back to Laughlin and that crowd.

* * *

[p.12] Mrs. Gross: This deal—you didn't answer my question: What is going to happen to Bernice?

[Prosecutor A]: If you tell the truth you are going to be a government witness."

* * *

[p.13] [Prosecutor B]: And possibly, as [Prosecutor A] said, if, for example, you testified before the Grand Jury and lied to that Grand Jury, it might be if it saw fit that the Grand Jury could indict you for perjury.

Mrs. Gross: Then it's all against me, too, then even now?

[Prosecutor B]: That's the way the picture is right now.

Mrs. Gross: Even if I levelled with you all it would still be the same?

[Prosecutor A]: No, it wouldn't.

[Prosecutor B]: [Prosecutor A] has indicated —

[Prosecutor A]: I'm putting this on the record.

Mrs. Gross: So I see.

[Prosecutor A]: But this is a protection to you too. We need your testimony about the woman. However fine a woman you may be you are small change in this obstruction of justice. You are not the king pin. The king pin has been getting away with something for a long time."

* * *

[Prosecutor A]: * * * All we have is my word that I will ask the Grand Jury to give us a witness so we can go after the big fish and you know as well as I do the Grand Jury can say no. [p.15]

* * *

[Prosecutor B]: Let me say this to you. * * * As I see it, the picture as it presently stands, there is one question pending. Did you or did you not commit perjury when you testified before the grand jury. Now in the event that you did, and you know the answer to this, the next question is: is the Grand Jury going to indict you for the perjury that you committed if you did commit it." [p.16]

[Prosecutor A]: Let me tell you this. If it came out the way I hoped it would today, and still hope it will, that you tell the truth, I would ask you to tell it to us first, and then when the Grand Jury comes back from lunch and after you have had lunch I will ask you to tell it to the Grand Jury. After that if you wanted to cooperate, and this would be strictly a voluntary thing, I would ask you to call the old man or Forte's lawyer, or both, and I would like to be listening in or have some detective listening in on the other extension, and we would have a case that would be so tight. [p.17] [p.18]

Mrs. Gross: Uh hum.

[Prosecutor A]: And you would be in a position of being the cooperative government witness in the eyes of everyone at that point.

Mrs. Gross: Uh hum.

[Prosecutor A]: You can picture how tight the case is at that point. Because the call will be expected.

Mrs. Gross: Well I don't know.

[Prosecutor A]: Well –

Mrs. Gross: I don't know anything about that. I wouldn't even know where to call. I really don't know anything about that.

[Prosecutor A]: Well we can give you a couple of numbers."

[p.59] [Prosecutor B]: Did he know you were coming down to D.C. to testify?

Mrs. Gross: Yes.

[Prosecutor B]: What did he say about that?

Mrs. Gross: I'll call you tomorrow evening.

[Prosecutor B]: Did he? That is today?

Mrs. Gross: That is today, yes. Ten o'clock in the morning.

[Prosecutor B]: Is he going to call you tonight?

Mrs. Gross: I guess he will.

[Prosecutor B]: Can we have somebody there?

Mrs. Gross: Sure."

* * *

[p.60] [Prosecutor A]: You're agreeable to somebody being there?

Mrs. Gross: Yes.

[Prosecutor B]: You got two phones in the house?

Mrs. Gross: Yes.

[Prosecutor B]: Maybe we can sort of operate to set up to make a recording?

[Prosecutor A]: It will be the fairest thing to you, too.

Mrs. Gross: It don't matter, I've told you everything. There isn't anything else really, honest there isn't. There's nothing else I can tell you that would help you with him or with Wallace because I don't know.

**2. Excerpts of Second Appearance of Mrs. Gross before Grand Jury, March 1, 1963.**

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[p.4] [By the Prosecutor]

Q. I have no other questions at this time. There are three hours of questions and answers, thereabouts, that we can have read to the Grand Jury from the transcript that came before. Based on that if you all have any questions

that you would like to ask Mrs. Gross we can have those questions answered. Is there anything of immediate information of Mrs. Gross, Mr. Deputy Foreman or ladies and gentlemen, that you would like to ask?

Deputy Foreman: I have no questions.

By [Prosecutor A]:

Q. Just before the Grand Jury then one final thing. You did say, didn't you Mrs. Gross, that since you have come forward and told the truth now you would also be agreeable to having someone listen in on your extension phone tonight should Forte call you? [p.5]

A. [Mrs. Gross] The only trouble with that is my husband doesn't know anything about this, and if somebody would have to tell him I –

Q. – I think in fairness I should advise you if this Grand Jury matter results in an indictment of anyone it is going to be public information anyway. The possibility of your husband learning is extremely great. You can think that over yourself as a practical person.

A. I still would not like it in my house, I wouldn't.

Q. You see, we have no legal way of doing it except in your house?

A. Well, I was not going to answer the phone this evening because I don't want to have anymore conversation and I was going to New York today – that's my home– but I couldn't because I had to come here, and I know I'm going tomorrow. I'm not answering the phone tonight and if he knows I'm here he's just liable not to call.

Q. I have no way at all of forcing the answer from you. It has to be your personal choice.

A. I don't.

Q. Do you have any objection of making a telephone call to Mr. Forte before leaving Washington and chat with him on the phone, as well as one with James Laughlin and chat with him on the phone?

A. I would rather not. [p.6]

Q. I understand that you would rather not, but your cooperation –

A. – If I had to I would but if I don't have to I wuld rather not.

Q. On the record let me put this to you, all we want is the truth, you don't have to make those telephone calls?

A. I have told you the truth.

Q. Fine, but the thing we talked about on the record down in [the Prosecutor B's] office I'll say it right before the Grand Jury. I said to Mrs. Gross that the big fish behind an operation like this are the ones who are most guilty. The only possible way of getting the people who are putting up the money and instigating the plans of this operation is by the cooperation of someone who is in between, that is the only way to make the case on the big people. We need Mrs. Gross' cooperation and the Grand Jury's decision as to whether they would indict you for the perjury you committed this morning would be largely determined by the measure of your cooperation. You would not have to make the telephone call. You see my point?

A. I know your point very well. I understand your point very well.

Q. Mrs. Gross, you are an experienced police woman?

[p.7] A. I am, very.

Q. You know the point?

A. I realize your point but I say I wuld rather not. If I did not have to I would rather not. If I had to I would. There is nothing I can do.

Deputy Foreman: [Prosecutor A], I would like to say this, and I think I speak for the Grand Jury, as regards what you said, that you would rather get the ones responsible for the over-all operation. If we don't get cooperation and can't get those we'll get the ones we can. I think you can tell this witness and any other witness, in or out of this room, that we'll go after him. We prefer the big

ones but if they make it impossible for us to get the big ones we'll get the little ones.

[Prosecutor A]: Thank you Mr. Deputy Foreman. That's the point, Mrs. Gross. We really need your cooperation. We really do. May I ask you to wait when you leave the Grand Jury and let me suggest a program of operation to you?

A. Okay.

[Prosecutor A]: Thank you very much for your cooperation in telling the truth today.

(Witness was excused.)